



SENATE BILL 493: 2014 Regulatory Reform Act.

2013-2014 General Assembly

Committee:	House Finance	Date:	June 16, 2014
Introduced by:	Sen. Walters	Prepared by:	Karen Cochrane-Brown
Analysis of:	PCS to Second Edition S493-PCS35560-ROf-40		Erika Churchill and Amy Jo Johnson, Staff Attorneys

SUMMARY: *The House Committee Substitute for SB 493 makes various changes to the laws relating to business regulation, State and local government regulation, and health and safety regulations.*

The PCS contains the following Finance committee related changes:

- *Section 1.7 establishes the Landscape Contractors Licensing Board and authorizes the board to collect fees.*
- *Section 1.8 establishes different utility regulatory fees for the retail services of certain telecommunications providers. (Identical to HB 1052)*
- *Section 3.2 establishes the Behavior Analyst Licensing Board and authorizes the board to collect fees.*

BILL ANALYSIS:

PART I. BUSINESS REGULATION

PROHIBIT CERTAIN HEADLIGHTS/AIRBAGS

SECTION 1.1 prohibits the operation of a motor vehicle with headlamps altered from their original design and not in compliance with federal headlamp safety standards. A violation would be an infraction punishable by a fine up to \$100.

This section also makes it unlawful to transfer a motor vehicle when the transferor has knowledge that a counterfeit airbag or a nonfunctional airbag has been installed in the vehicle. A counterfeit airbag is defined as one which bears the mark of the vehicle manufacturer without authorization.

UNCLAIMED LIFE INSURANCE BENEFITS

SECTION 1.2 enacts the Unclaimed Life Insurance Benefits Act. The act would direct insurers to compare their records of in-force policies, annuities, and account owners to a death master file on a semi-annual basis to determine whether any benefits might be payable. The death master file is from the US social security administration or any other database or service that the insurer determines to be substantially as inclusive as the death master file. If the insurer finds a match, it must make a good faith effort to confirm the match and provide appropriate claims forms to the beneficiary within 90 days. The



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Commissioner of Insurance may exempt an insurer from the death master file comparison if compliance would result in hardship to the insurer. Nothing in this act would amend, modify or supersede the Unclaimed Property Act.

BAIL BOND SHIELD AMENDMENT

SECTION 1.3 amends the bail bondsmen official shield law to allow variation of the shield to accommodate the license number.

REPEAL UNNECESSARY UTILITIES PROVISION

SECTION 1.4 repeals two unnecessary and obsolete provisions in the Utilities law.

MERCHANT EXEMPTION FROM LOCKSMITH LICENSING

SECTION 1.5 amends the Locksmith Licensing law to allow merchants and stores to duplicate transponder type keys that require programing without obtaining a license.

CLARIFY PROFESSIONAL ENGINEER EXEMPTION

SECTION 1.6 clarifies certain activities that are exempt from the licensing requirements of the Engineering and Land Surveying Act by removing or modifying imprecise and inconsistent language. This section rewrites the so-called "industrial exemption" to clarify to whom the exemption applies, to what activities, and where the exemption could be used. The section also removes reference to activities performed by employees of the State or a political subdivision because the same language is contained in another section of the law. It also clarifies that where the safety of the public is directly involved, engineering and surveying activities must be under the responsible charge of a licensed professional.

LANDSCAPE CONTRACTOR LICENSING

SECTION 1.7 rewrites Chapter 89D to convert the current landscape contractors' registration board into a licensing board. Under current law, a person may not use the title "landscape contractor" or advertise as such without first obtaining a certificate from the board. The law does not prohibit engaging in the business without a certificate, only use of the title. This section rewrites the law to require that any person engaged in the business of landscape contracting must obtain a license. The section contains numerous exemptions from the licensing requirement, including an exemption for persons performing landscaping work costing less than \$25,000 for a given job site during any consecutive 12-month period. *The section establishes the fee schedule for applications, examinations, initial license and renewal, late renewal, and duplicates license fees. The fees are the same as in current law. However, the fees will apply to a new set of people who were not previously required to be certified.* The section contains a grandfathering clause to allow certain applicants to obtain a license without examination.

ADJUST THE UTILITY REGULATORY FEE

SECTION 1.8 amends the statute governing the regulatory fee paid by public utilities by dividing the revenues of public utilities into three categories:

- Non-competitive jurisdictional revenues
- Subsection (h) competitive jurisdictional revenues
- Subsection (m) competitive jurisdictional revenues.

Each category of revenue will be subject to its own regulatory fee, as established by the General Assembly.

SUMMARY EJECTMENT SERVICE OF PROCESS

SECTION 1.9 amends the law governing service of process in eviction proceedings to allow a landlord the option of having the summons and complaint in an eviction case served by a private process server instead of the Sheriff. The private process server must be all of the following:

1. Over the age of 21
2. Not a party to the action
3. Employed by the plaintiff.

CLARIFY EFFECTIVE DATE OF DEFINITION OF DISCHARGE OF WASTE

SECTION 1.10 amends the effective date of a provision that was enacted in 2012 to clarify that the law applies to any contested case filed or pending as of July 16, 2012, when the law became effective. S.L. 2012-187 amended the definition of the term "discharge" to clarify that a discharge does not include an emission which is a release into the outdoor atmosphere of air contaminants.

CLARIFY MEMBERSHIP UNDER INSURANCE GUARANTY ASSOCIATION ACT

SECTION 1.11 provides that a self-insurer's membership in the NC Self-Insurance Guaranty Association terminates upon merger with the licensed insurer. The Association provides for the payment of workers' compensation claims against member self-insurers in case of insolvency of one of its members. After termination of membership, the Association would continue to cover claims against the member while the membership was active.

PART II. STATE AND LOCAL GOVERNMENT REGULATION

NOTIFY PROPERTY OWNERS OF RIGHT OF WAY TRANSFERS

SECTION 2.1 requires units of local government that require or accept right-of-way dedications in exchange for transferred density credits to notify the applicant and the property owner when the local government begins review of or negotiations for a right-of-way dedication and associated density credit transfer, whichever occurs first. If the property owner is not the applicant, then the property owner must be given notification of right-of-way dedications and any related density credit transfers. The notification must be sent to the last known address of the owner, must include a copy of this statute, and must include any local ordinances, policies, or procedures governing the calculation and application of the density credit transfer. Section 2.1 becomes effective October 1, 2014, and applies to dedications occurring on or after that date.

DOT CONDEMNATION/CORRIDOR MAP CHANGES

SECTION 2.2.(a) provides that interest in a DOT condemnation is calculated from the date of the taking to the date the judgment is paid (rather than the date of judgment).

SECTION 2.2.(b) provides that the owner of property subject to the condemnation must be awarded costs and attorney fees if the final judgment exceeds the amount of the initial deposit by 25% or more, but any award of attorney fees for this reason cannot exceed one-third of the difference between the judgment and the award (including interest) and the initial deposit.

SECTION 2.2.(c) reduces the time from three years to one year from the date of submission that applications for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map can be delayed.

Sections 2.2(a) and 2.2(b) become effective July 1, 2014, and apply to condemnation actions filed on or after that date. Section 2.2(c) becomes effective July 1, 2014.

CLARIFY OUTDOOR ADVERTISING AMENDMENTS

SECTION 2.3.(a) requires the Department of Transportation to issue a selective vegetation removal permit upon the request of the owner of outdoor advertising, or the owner's agent, for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone and along acceleration and deceleration ramps for the purpose of improving the view of the outdoor advertising. This section also clarifies that municipalities, counties, local or regional zoning authorities, and other political subdivisions cannot regulate or prohibit the repair or reconstruction of any nonconforming signs so long as the square footage of its advertising surface area is not increased.

NOTICE TO CHRONIC VIOLATORS

SECTION 2.5 clarifies the law for notice to chronic violators of municipalities' and cities' public nuisance ordinances.

ALLOW FOR DIFFERENTIAL TREATMENT OF FRATERNITIES AND SORORITIES IN ZONING

SECTION 2.6 allows municipalities and counties to differentiate in their zoning ordinances between those fraternities and sororities that are approved or recognized by a college or university and those that are not in the following ways: (1) the ordinance must give a fraternity or sorority that was suspended or not recognized at least two years to reestablish approval or recognition; (2) the ordinance must give a fraternity or sorority seeking approval or recognition at least three years to do so; and (3) the ordinance must require that a property cannot be occupied successively by a fraternity or sorority seeking to reestablish approval or recognition and a fraternity or sorority seeking approval or recognition, and vice versa, unless the property is occupied by a fraternity or sorority that has been approved or recognized for at least twelve successive months between the two.

REPEAL PROTEST PETITIONS

SECTION 2.7 repeals the statewide statutory procedure for a qualified protest against a zoning map amendment. The section also repeals any local authority for submission, review, or action by any municipality upon any zoning protest petition, whether or not it was enacted as a provision in a municipal charter.

EXTEND DEADLINE FOR ADOPTION OF DIVISION OF EMPLOYMENT SECURITY RULES

SECTION 2.8 extends the deadline for the adoption of the Department of Commerce, Division of Employment Security rules from December 31, 2012, to December 31, 2015.

REPEAL OBSOLETE DEPARTMENT OF INSURANCE STATUTES

SECTION 2.8 repeals certain obsolete and/or unnecessary Department of Insurance reporting requirements, including annual statements by professional liability insurers, medical malpractice claim reports, managed care reporting and disclosure requirements, a report to the General Assembly concerning insurance coverage for motorcyclists, a report to the General Assembly on the effects of changes in North Carolina civil law statutes on the experience of certain insurers, and a report to the General Assembly on external reviews.

POST-ARREST PHOTOGRAPHIC IMAGES NOT PUBLIC

SECTION 2.10 makes the mug shot of a person charged with the commission of a crime confidential and exempt from disclosure as a public record, unless the person is charged with a felony or the officer or agency determines that release of the photograph is reasonably necessary to secure the public's safety. The photograph would become public upon conviction of the person charged. This section is effective when it becomes law and applies as to persons charged with a misdemeanor or felony on or after that date.

IMPROVE ADMINISTRATIVE PROGRAM MONITORING AT DPI

SECTION 2.11.(a) requires the Department of Public Instruction to increase the efficiency of school transportation services by doing the following:

- Reduce the annual budget rating formula for school bus operations by 1% annually beginning in fiscal year 2014-2015 until fiscal year 2018-2019 when the buffer reaches 5%.
- Limit the statewide inventory of spare school buses that meet the replacement criteria to 10% of the total statewide inventory.
- Develop and implement a replacement part inventory of management policy to reduce inventories to levels that are sufficient to meet the operational requirement of the school bus transportation program. The Department is required to report the policy to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 31, 2014.

SECTION 2.11.(b) requires the Department of Public Instruction, in consultation with the Department of Administration, to establish term contracts for school bus replacement parts with statewide annual sales that exceed \$100,000. Local boards of education must purchase school bus replacement parts from these contracts unless the purchase price from noncertified sources (including delivery cost) is less than the cost under the State term contract and the replacement parts purchased are the same or substantially similar in quality, service, and performance as those items available under the State term contract.

SECTION 2.11.(c) requires the Department of Public Instruction to revise the State inspection process for county school bus maintenance operations by incorporating inspection, maintenance, and

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utilization information from the school bus fleet management system to identify noncompliant school bus maintenance facilities and to improve oversight. The Department must report the revised inspection process and implementation schedule to the Joint Legislative Education Oversight Committee by December 31, 2014.

SECTION 2.11.(d) requires the Department of Public Instruction to eliminate certain positions in the Textbook Services program.

SECTION 2.11.(e) requires the Department of Public Instruction to jointly develop a plan with the Department of Administration to reallocate unneeded textbook warehouse space to other State agencies. The plan must be submitted to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by December 31, 2014.

SECTION 2.11.(f) requires the Department of Public Instruction to develop and implement a process for monitoring time and resources required for the services provided by the Plant Operation and School planning sections, and requires the Department to collect and compile information during fiscal year 2014-2015 from local school boards to measure benefits the local boards receive from the services provided. The Department must report its findings to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by September 1, 2015.

SECTION 2.11.(g) requires the Department of Instruction to develop model loss prevention and return-to-work programs to be adopted by the State Board of Education to be used by local school boards.

SECTION 2.11.(h) gives local boards of education the authority to implement injury prevention and return-to-work programs based on models adopted by the State Board of Education.

SECTION 2.11.(i) gives the State Board of Education the authority to adopt strategic goals to guide administrative programs and activities provided by the Department of Public Instruction.

SECTION 2.11.(j) requires the Superintendent of Public Instruction to report to the Joint Legislative Education Oversight Committee by December 31, 2014, and annually thereafter, on the performance of each administrative support program in the performance management system created by Section 2.11(k) of this act.

SECTION 2.11.(k) requires the Department of Public Instruction to report to the Joint Legislative Education Oversight Committee by December 31, 2014, and annually thereafter on the performance of each strategic objective identified by the State Board of Education. The Department of Public Instruction must develop a performance management system for administrative support programs to include processes for identifying and monitoring the objectives and associated outcomes for each program, the outputs produced by each program activity, and procedures that ensure the efficient and effective use of State resources to perform each activity.

Sections 2.11.(b) and 2.11.(h) become effective January 1, 2015. Section 2.11.(b) applies to purchases made on or after that date. Section 2.11.(d) becomes effective June 30, 2014. The remainder of this section is effective when it becomes law.

INCREASE PENALTY FOR GRAFFITI VANDALISM

SECTION 2.12 makes all graffiti vandalism a Class 1 misdemeanor with a minimum fine of \$500 and a 24-hour community service requirement. This section creates a Class I felony if the cost to

repair damage caused by the violation is more than \$500, or if the person has two or more prior convictions for graffiti vandalism. If a person is convicted of five or more violations in a single session of district court or in a single week of superior court, and at least five of the offenses occurred within a 60-day period, the court must consolidate the offenses for judgment and the consolidated offenses are punishable as one Class I felony. Section 2.12 becomes effective December 1, 2014, and applies to offenses committed on or after that date.

COMPLIANCE WITH BUILDING CODE INSPECTION REQUIREMENTS

SECTION 2.13 clarifies that for inspections of work in progress, municipalities and counties cannot adopt a local ordinance or resolution that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council.

ETHICS REQUIREMENTS FOR CERTAIN CITY OFFICIALS

SECTION 2.14 adds a new statute, G.S. 160A-88, which provides additional ethics requirements for members of governing boards of cities and consolidated city-counties for cities and city-counties with a population of more than 75,000. The additional standards for the governing boards are:

- All members must complete a statement of economic interest, which must be filed with the clerk to the governing board on or before April 15 of each year.
- All members are prohibited from mentioning or permitting another person to mention the member's public position in nongovernmental advertising that advances the private interest of the member or others.
- Members are prohibited from using or permitting the use of public funds for any advertisement or public service announcement in a newspaper, on radio, television, magazines, or billboards that contains that member's name, picture, or voice, except in the case of local, State, or national emergency, and only if the announcement is reasonably necessary to the member's official function. This provision does not apply to fundraising on behalf of and aired on public radio or public television.
- Members are prohibited from using or disclosing nonpublic information gained in the course of, or by reason of, the member's official responsibilities in a way that would affect a personal financial interest of the member or any other person.

Section 2.14 becomes effective October 1, 2014. The statement of interest required by this section must be filed with the clerk to the board on or before January 1, 2015.

BUILDING CODE STUDY

SECTION 2.16 requires the North Carolina Building Code Council to study the authority granted to local building inspectors in those counties and cities where building plans are reviewed and approved prior to the issuance of a building permit. The Council must report to the 2015 General Assembly on its findings, and make recommendations on any statutory changes that are necessary to ensure local field inspectors cannot disregard, or independently require changes to, any construction plans previously approved by a county or city.

ANIMAL EUTHANASIA REQUIREMENTS

SECTION 2.17 amends G.S. 19A-24 to require certified animal euthanasia technicians to correctly calculate chemical agent dosage based upon the species, age, weight, and condition of the animal. The technicians are also required to record the identification number of the animal, its species, sex, weight, breed description, date, dosages for drugs that are administered, and amounts of drugs wasted. When a certified euthanasia technician uses any chemical instructions that use the animal's weight to determine dosage, the certified euthanasia technician must weigh the animal. If the technician increases or decreases the dose of the chemical agent from the amount recommended, the technician must record the amount administered and the reason for administering an amount different from that recommended for an animal of that weight.

Section 2.17 becomes effective July 1, 2015.

BRAC RELATED DISCUSSION AND DOCUMENTS

SECTION 2.18.(a) amends the public records law to provide that public agencies are not required to disclose information that reveals documents related to the federal government's process to determine closure or realignment of military installations until a final decision has been made by the federal government in that process.

SECTION 2.18.(b) amends the open meetings law to provide that closed sessions of public bodies are permitted to discuss matters relating to military installation closure or realignment.

Section 2.18 becomes effective October 1, 2014, and applies to meetings held on or after that date.

PART III. HEALTH AND SAFETY REGULATION

AUTISM HEALTH INSURANCE COVERAGE

SECTION 3.1.(a) would require certain health benefit plans to provide coverage for the screening, diagnosis and treatment of autism spectrum disorders for individuals 23 years of age or younger, provided the individual had received a diagnosis of autism spectrum disorder prior to the age of eight. This section specifies that the requirement to provide coverage for autism spectrum disorder **will not apply** to plans that are subject to the requirement to cover the essential benefits health package under 45 C.F.R. 147.150(a). The provision outlines various coverage requirements including a prohibition on visit limits, co-payment specifications, and a \$36,000 cap on benefits for behavioral health treatment. The provision also addresses review of treatment by an insurer and requires the Commissioner of Insurance to grant a health benefit plan issuer a waiver from the requirement to provide coverage if the issuer demonstrates to the Commissioner that compliance with the coverage requirements has increased the cost of the health benefit plan by an amount of 1% or greater in the premium rate charged under the health benefit plan over the most recent calendar year. This section is effective October 1, 2014, and applies to insurance contracts issued, renewed, or amended on or after that date.

SECTION 3.1.(b) would require that health insurance issuers report every two years to the Commissioner of Insurance on the cost and utilization of mandated coverage requirements. The Commissioner is required to consolidate the information and report to the General Assembly on specified issues relating to the cost and utilization of mandated coverage requirements. This provision defines "mandated coverage requirements" as "benefits specific to care, treatment, and services that an

insurer is required to offer, as well as benefits relating to coverage of provider types, cost-sharing, or reimbursement methods.

BEHAVIOR ANALYSIS LICENSURE

SECTION 3.2. would create the North Carolina Behavior Analyst Board (NCBAB) and outlines the composition and duties of the NCBAB. This section also creates a licensure scheme for behavior analysts and assistant behavioral analysts. A person is guilty of a Class 2 misdemeanor if that person practices behavior analysis or holds himself or herself out as practicing behavior analysis without a license, unless that person meets an exemption outlined in the section. A license would be required for behavior analyst and assistant behavior analysis beginning January 1, 2015.

PHARMACY BENEFITS MANAGEMENT REGULATION

SECTION 3.3. would regulate the setting of a maximum allowable cost (MAC) price by a pharmacy benefits manager. The MAC price is defined as the price per unit that a pharmacy benefits manager reimburses a pharmacy for a prescription drug, excluding dispensing fees, copayments, coinsurance, and other cost-sharing charges, if any. It requires specified regular updates to the MAC price by the pharmacy benefits manager and outlines requirements for appeals of the set MAC price. This section also regulates the release of patient information by the pharmacy benefits manager. Additionally, pharmacy benefits managers are prohibited from taking any action to restrict an individual's choice of pharmacy or provide any incentive to use a particular pharmacy. This section is effective January 1, 2015, and applies to contracts entered into, renewed, or amended on or after that date.

LIMITED FOOD SERVICES AT LODGING FACILITIES

SECTION 3.4. would include lodging facilities that serve only reheated food that has already been pre-cooked in the definition of "Limited food services establishment" and makes conforming changes allowing the Commission for Public Health to issue permits to these lodging facilities.

YOUTH SKIN CANCER PROTECTION

SECTION 3.5. would amend G.S. 104E-9.1(a)(2) to require that operators of tanning equipment prohibit any person less than 18 years old from using the equipment. This section becomes effective July 1, 2014.

NURSING HOME ADMINISTRATOR ACT REVISION

SECTION 3.6. makes a technical change to the Nursing Home Administrator Act, thus allowing the use of an exam for licensure that is not "administered by the Board".

ADA REQUIREMENTS FOR PRIVATE POOLS

SECTION 3.7. Section 1109.14 of the NC State Building Code (Building Code) requires all recreational and sports facilities, including swimming pools, be provided with handicap accessible features. This section would require the Building Code Council to amend the building code such that swimming pools are required to be accessible only to the extent required by the Americans with Disabilities Act.

REPORT ON SEEK

SECTION 3.8. requires the Division of Child Development and Early Education to report to the Joint Legislative Oversight Committee on Health and Human Services and to the 2015 General

Assembly by March 15, 2015 prior to implementing the use of the Subsidized Early Education for Kids (SEEK) system data to make payments to child care providers. The report will include the outcomes of the SEEK program, barriers to, and plans to overcome these barriers, to ensure effective and efficient Statewide implementation of SEEK.

EXCEPTION TO HOSPITAL AUTHORITY CONFLICT OF INTEREST

SECTION 3.10. amends the conflict of interest statute for commissioners and employees of a hospital authority to allow a commissioner or employee to have an interest in a contract for materials or services for hospital facility as long as the commissioner or employee is not involved in making or administering the contract. The conflict of interest statute for public hospitals contains a similar exemption for its directors and employees.

REPORT ON MULTIPLICATIVE AUDITING AND MONITORING OF CERTAIN SERVICE PROVIDERS

SECTION 3.11. would require the Deputy Secretary of Behavioral Health and Developmental Disabilities Services of the Department and Health and Human Services to report and make recommendations to the Joint Legislative Oversight Committee on Health and Human Services regarding the status of multiplicative auditing and monitoring of providers specified in the provision.

END SUNSET FOR FACILITIES THAT USE ALTERNATIVE ELECTRONIC MONITORING SYSTEMS

SECTION 3.12. would eliminate the sunset for the pilot program established by the Department of Health and Human Services, as directed by Session Law 2009-490, to utilize electronic supervision during the sleep hours at specified facilities.

STATE MEDICAID RECREDENTIALING PERIOD

SECTION 3.13. would codify the Medicaid provision application and recredentialing fee found in Session Law 2013-360 and, effective July 1, 2017, would adjust the fee schedule for recredentialing to every five years.

PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 4.1 provides that if any section of the act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act.

SECTION 4.2 Except as otherwise provided, this act is effective when it becomes law.